

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE DEFINITION OF "WITHOUT CONSENT",
AS USED IN THE PROSECUTION OF SEX CRIMES, INCLUDES A SITUATION IN WHICH THE VICTIM DID
NOT INDICATE CONSENT THROUGH WORDS OR CONDUCT; AMENDING SECTION 45-5-501, MCA; AND
PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definitions. (1) (a) As used in 45-5-503, the term "without consent" means:

(i) the victim is compelled to submit by force against the victim or another; ~~or~~

(ii) subject to subsections (1)(b) and (1)(c), the victim is incapable of consent because the victim is:

(A) mentally defective or incapacitated;

(B) physically helpless;

(C) overcome by deception, coercion, or surprise;

(D) less than 16 years old;

(E) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or
parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has
supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

(F) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(II) is an employee, contractor, or volunteer of the youth care facility; or

(G) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility
or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as
defined in 53-20-102, and the perpetrator:

(I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(II) is an employee, contractor, or volunteer of the facility or community-based service-; or

(iii) the victim did not indicate freely given agreement through words or conduct to have sexual

1 intercourse.

2 (b) Subsection (1)(a)(ii)(E) does not apply if the individuals are married to each other and one of the
3 individuals involved is on probation or parole and the other individual is a probation or parole officer of a
4 supervising authority.

5 (c) Subsections (1)(a)(ii)(F) and (1)(a)(ii)(G) do not apply if the individuals are married to each other and
6 one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services,
7 or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer
8 of the facility or community-based service.

9 (2) As used in subsection (1), the term "force" means:

10 (a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a
11 forcible felony by the offender; or

12 (b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the
13 offender has the ability to execute the threat.

14 (3) As used in 45-5-502 and this section, the following definitions apply:

15 (a) "Parole":

16 (i) in the case of an adult offender, has the meaning provided in 46-1-202; and

17 (ii) in the case of a juvenile offender, means supervision of a youth released from a state youth
18 correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

19 (b) "Probation" means:

20 (i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime
21 and subject to the supervision of a supervising authority; and

22 (ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41,
23 chapter 5.

24 (c) "Supervising authority" includes a court, including a youth court, a county, or the department of
25 corrections."

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27 **NEW SECTION. Section 2. Applicability.** [This act] applies to proceedings begun after [the effective
28 date of this act].

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